

SENATE JOURNAL

Forty-second Legislature—Fourth Called Session.

FIRST DAY.

Senate Chamber.

Austin, Texas, Nov. 3, 1932.

The Senate met at 12 o'clock noon pursuant to the call of the Governor, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, no quorum being present, the following Senators answering to their names:

DeBerry.	Poage.
Hardin.	Pollard.
Hornsby.	Purl.
Neal.	Russek.
Patton.	Woodul.

Absent.

Beck.	Oneal.
Berkeley.	Parr.
Cousins.	Parrish.
Cunningham.	Rawlings.
Gainer.	Small.
Greer.	Stevenson.
Holbrook.	Thomason.
Hopkins.	Williamson.
Martin.	Woodruff.
Moore.	Woodward.

Temporary Officers.

The Chair announced the appointment of the following temporary officers:

Bob Barker, Secretary.
Wendell O'Neal, Journal Clerk.
A. W. Holt, Sergeant-at-Arms.

Recess.

On motion of Senator Hornsby, the Senate, at 12:52 o'clock p. m., recessed until 10 o'clock tomorrow morning.

FIRST DAY.

(Continued.)

Senate Chamber,

Austin, Texas,

November 4, 1932.

The Senate met at 10 o'clock a. m., pursuant to recess, and was

called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Parrish.
Berkeley.	Patton.
Cousins.	Poage.
Cunningham.	Pollard.
DeBerry.	Purl.
Gainer.	Rawlings.
Greer.	Russek.
Hardin.	Small.
Hornsby.	Stevenson.
Martin.	Thomason.
Neal.	Williamson.
Oneal.	Woodruff.
Parr.	Woodul.

Absent.

Holbrook.	Moore.
Hopkins.	Woodward.

Prayer by the Rev. A. W. Jones.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Williamson.

Bills and Resolutions.

By Senators Pollard and Woodul:

S. B. No. 1, A bill to be entitled "An Act regulating crude petroleum oil and natural gas relative to the production, transportation and storage; amending Section 1 of Chapter 26 of Acts of the Forty-second Legislature, First Called Session, changing the definitions of waste and prohibiting waste as defined, and eliminating the restrictions upon the power of the commission therein contained, and eliminating the last paragraph of said Section; providing that the Railroad Commission of Texas cannot regulate as waste any process of refining crude petroleum oil; amending Section 5 of Chapter 26 of Acts of the Forty-second Legislature, First Called Session, by adding to the authority and duty of the Railroad Commission that of inquiring

into the market demand for crude petroleum oil and natural gas to determine whether waste exists or is imminent, and to require sworn statements as to the market demand for such oil and gas, and also providing for methods of securing information as to production, storage and transportation; amending Section 7 of Chapter 26 of Acts of the Forty-second Legislature, First Called Session, by eliminating certain provisions therefrom and changing other so that as amended said Section provides for notice and hearings by the Railroad Commission of Texas, authorizing such Commission to make rules, regulations or orders to correct, prevent or lessen waste, provides for the distribution of the allowable production of crude petroleum oil and natural gas as between properties and pools, requires compliance therewith, and provides for revocation, amendment, renewal and extension of rules, regulations or orders upon certain conditions; amending Section 15 of Chapter 26 of Acts of the Forty-second Legislature, First Called Session, requiring the said commission to make and enforce rules, regulations or orders, and do all things necessary for the conservation of crude petroleum oil or natural gas and the prevention of waste, and specifying certain purposes; amending Section 8 of Chapter 26 of Acts of the Forty-second Legislature, First Called Session, providing for judicial review of laws relating to conservation of crude petroleum oil or natural gas, and rules, regulations, or orders issued thereunder, fixing the jurisdiction and providing procedure therein, fixing the burden of proof and establishing prima facie validity that if any part of this Act be held unconstitutional the remaining portions shall nevertheless be valid; making this Act cumulative of all laws not inconsistent herewith and not expressly repealed or amended; repealing Section 9 of Chapter 26 of Acts of the Forty-second Legislature, First Called Session, and Section 11j of Chapter 28 of Acts of the Forty-second Legislature, First Called Session, and all other laws and parts of laws in conflict herewith; and declaring an emergency."

Read and referred to Committee on State Affairs.

Committee from the House.

A committee from the House appeared at the bar of the Senate and Mr. McGregor informed the Senate that the House was organized and ready for business.

Senators Excused.

The following Senators were excused:

Senator Holbrook for the week, illness, on motion of Senator Poage.

Senator Parr for yesterday, important business, on motion of Senator Pollard.

Senator Woodward for yesterday and today, important business, on motion of Senator Hardin.

Senator Hopkins, indefinitely, important business, on motion of Senator Cousins.

President Pro Tem.

Senator Pollard nominated Senator Cunningham for President Pro Tem of the Senate.

The nomination was seconded by Senators Russek, Hardin, Thomason, Poage, Neal, Woodul, Parrish, DeBerry, Purl, Berkeley, Greer, Gainer and Cousins.

The Chair appointed Senators DeBerry, Gainer and Woodruff as tellers. The tellers announced the following results:

Senator Cunningham—22 votes.

The Chair declared Senator Cunningham duly elected President Pro Tem, and appointed Senators DeBerry, Gainer and Pollard to escort Senator Cunningham to the platform where the Chair administered the oath of office.

The Chair introduced President Pro Tem Oliver Cunningham, who briefly addressed the Senate.

Call for Session.

PROCLAMATION

by the
Governor of the State of Texas
No. 12080.

To all to whom these presents shall come:

Whereas, on account of the recent decision of the Federal Court, relating to the pro-ration and conservation of oil and gas, our pro-ration and conservation statutes are rend-

ered inadequate to properly conserve and pro-rate the production of oil and gas in this State, making it necessary to amend the conservation laws in order to conserve one of our greatest natural resources; and

Whereas, there is grave danger of the entire collapse of pro-ration orders of the Railroad Commission thereby causing great destruction and waste of this natural resource.

Now, therefore, I, R. S. Sterling, Governor of the State of Texas, by virtue of the authority vested in me by the Constitution of this State, hereby call a Special Session of the Forty-second Legislature of Texas, to be convened in the City of Austin, Texas, commencing at 12 o'clock noon, Thursday, the 3rd day of November, A. D., 1932, for the following purposes:

1. To amend the Conservation statutes of the State of Texas, relating to the production of oil and gas.

2. To consider and act on such other subjects of public imperative importance, as the Executive may, from time to time during the Session, submit by message or otherwise.

In testimony whereof, I have hereunto signed my name officially and caused the Seal of State to be impressed hereon at Austin, Texas, this

the 2nd day of November, A. D., 1932.

R. S. STERLING,
Governor of the State of Texas.
(Seal) By the Governor:
JANE Y. McCALLUM,
Secretary of State.

Message from the Governor.

Executive Office,
Austin, Texas, Nov. 3, 1932.
To the Members of the Forty-second Legislature:

On the 14th day of July, 1931, I convened you in extraordinary session, for the purpose of passing laws to conserve the natural resources of this State, and submitted to you a message from which I quote in part as follows:

"A grave crisis confronts the State in the conservation of its natural resources. The earth's reservoirs of oil and gas are being drained and virtually thrown away, and enormous underground waste is resulting

from the orgy of disorderly production.

"Section 59 of the State Constitution declares: 'The conservation and development of all the natural resources of this State and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties * * *'

"Aside from these legal public rights and duties, Texas of today owes a solemn moral obligation to Texas of tomorrow, not to exhaust and dissipate its resources needlessly so as to deprive oncoming generations of their benefits. * * *

"Existing laws are inadequate to carry out the conservation clause of the State Constitution, and in consequence, the State is suffering grievously. The oil industry, one of the State's principal sources of wealth, is demoralized and tottering on its foundations; thousands of people, directly dependent upon the industry, are going bankrupt; hundreds of thousands, perhaps millions, of others are feeling the effects indirectly; and the State itself is losing millions of dollars annually in reduced gross production tax receipts—all due to the wanton release and waste of oil and gas which nature has been storing up for thousands of years in the subterranean sands.

"So acute and disturbing has the emergency become, that citizens from all over Texas have besieged the Executive Office with telegrams, letters, petitions, long distance calls and personal visits, urging the convening of a special session of the Legislature to cope with the problem. Numerous chambers of commerce, local governing bodies, land, lease and royalty owners, business men and the vast majority of small independent oil men, have joined in the demand, pleading that immediate legislation was the only course that offered substantial relief.

"Not wishing to put the State to the expense and the members to the inconvenience of an extraordinary session unnecessarily, I withheld action for several weeks, hoping that the conservation problem might be worked out through voluntary public effort. However, such effort apparently has proved fruitless; and finally, after many members of the

Legislature had added their advocacy of a session and the enactment of a conservation law, I concluded that this course should be taken. * * *

In response to the proclamation, which I issued at that time, and in response to my request, you faithfully performed your duties and enacted a conservation measure, which I gladly approved and which measure has been upheld by the Federal Court as a valid law on the subject.

Most assuredly, I would not, at this time, have called you into extraordinary session except I believe a grave crisis again confronts the State and our people, on account of the Federal Court having held that the Railroad Commission has gone beyond the authority given in this statute enacted at that time in promulgating their orders as to proration and conservation of oil and gas. I respectfully call your attention to the decision in the recent case of *Peoples Petroleum Producers, Inc., et al. Vs. Lon. A. Smith, et al.*, wherein a three-judge Federal Court, consisting of Judges Hutcheson, Bryant and Grubb held as invalid orders of the Railroad Commission of Texas in an attempt to conserve the oil and gas resources of the State.

I invite your attention to the fact that during the consideration of the conservation measure which you wisely enacted at the first called session of the Forty-second Legislature, and under which the Railroad Commission is now operating, it was my belief, and it was the belief of a majority of the members of the Legislature, that the Act would be rendered invalid if it authorized the Railroad Commission to take into consideration the reasonable market demand for oil and gas in determining the amount of oil or gas which might be taken from any well or wells, or any given pool or pools, in order to prevent waste, which I believe would be held by the courts as a price-fixing measure.

Since the adjournment of the session at which our present conservation statute was passed, the Supreme Court of the United States, in the case of *Corporation Commission of the State of Oklahoma, et al. vs. Champlain Refining Company* (Vol. 13, Advance Opinion of the U. S.

Supreme Court, p. 725, et. seq) in reviewing a statute of the State of Oklahoma, has specifically held that a statute which authorized the Corporation Commission of the State of Oklahoma to take into consideration the reasonable market demand for oil and gas, in determining what would constitute waste, was not a price-fixing measure, and was a valid delegation of power and authority to the Corporation Commission, and that such Act was constitutional.

I have invited your attention to the recent case of *Peoples Petroleum Producers, Inc., et al. vs. Lon A. Smith, et al.*, wherein the Federal Court, consisting of the three judges named, upheld as valid our present conservation statutes, but nevertheless also held that the Legislature, having expressly withheld from the Railroad Commission the right or authority to take into consideration the reasonable market demand for oil or gas, and it was apparent that the Railroad Commission in fixing the allowable necessarily took into consideration the reasonable market demand for oil and gas, and which was not authorized by the Texas statute, in fact specifically denying to the Railroad Commission the right to take such matters into consideration, that the orders of the Railroad Commission, in its efforts to conserve these natural resources, and in its effort to comply with the authority given under our conservation law, were invalid, and that the allowable as determined and fixed by the Railroad Commission were without authority of law and exceeded the authority given by the Legislature.

As a result of the holding of the Federal Court in passing upon the orders of the Railroad Commission, and reviewed by the court in the case of *Peoples Petroleum Producers, Inc., et al. vs. Lon A. Smith, et al.*, it is apparent that in order to conserve the States' greatest natural resource, oil and gas, and in order to empower the Railroad Commission to take into consideration as an element of waste the production of oil or gas beyond the reasonable market demand therefor, it is necessary that our present conservation laws be amended so as to authorize the Railroad Commission to take

into consideration as an element of waste the production of oil and gas beyond the reasonable market demand therefor.

In view of the holding of the Supreme Court of the United States in the Oklahoma case, reference to which I have made, and in view of the three-judge Federal Court striking down the orders of the Railroad Commission for the reasons and in the manner as pointed out in the opinion of said three-judge court, it is apparent that conditions such as existed prior to, and during the time you were considering an amendment to our conservation laws, and as pointed out in my message of July 14th, 1931, above quoted, will again exist, and the State's greatest natural resource,—oil and gas,—will be wasted and destroyed, resulting in a tremendous financial injury to the State, especially to the tax payers and the public schools. It is apparent to me that under such conditions the State's income, as a result of the gross production tax on oil, will be reduced from approximately sixteen thousand dollars per day to a few thousand dollars per day, thus depriving the State of a tremendous amount of revenue so essentially necessary at this time to defray the expenses of government, especially the public schools, which must be protected.

Therefore, believing a crisis confronts the State of Texas, and for the reasons I have given herein, I feel it is my duty as the Chief Executive of the State of Texas, and as the representative of all the people of Texas, to re-convene you in extraordinary session, to the end that you may amend our present oil and gas conservation statutes as, in your wisdom, will meet the conditions now confronting the people of our State as a result of the decision in the case of Peoples Petroleum Producers, et al, vs. Lon A. Smith, et al.

I am sure that you understand and appreciate the gravity of the situation and that you will give your usual prompt and careful consideration to this subject.

Respectfully,

R. S. STERLING,
Governor of Texas.

Message from the House.

Hall of the House of Representatives,
Austin, Texas, Nov. 4, 1932.

Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolutions:
H. C. R. No. 1, Relative to mileage and per diem of the members of the Legislature.

H. C. R. No. 2, Inviting the Honorable John Garner to address a joint session of the Texas Legislature.

Respectfully submitted,

LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Notification Committees Appointed.

On motion of Senator Poage, the following Notification Committees were appointed:

To notify the House: Senators Poage, Woodruff and Gainer.

To notify the Governor: Senators Purl, Russek and Woodul.

S. C. R. No. 1.

Senator Neal sent up the following resolution:

Whereas, Hon. John Nance Garner, Speaker of the House of Representatives of the Congress of the United States, and democratic nominee for Vice-President of the American Union, will be in Texas on Monday, November 7th, en route to his home in Uvalde, and

Whereas, Mr. Garner, as a Texas Representative in Congress for the past thirty years has rendered notable service to the State and to the Nation, and

Whereas, Texas has been signally honored in having for the first time a native son nominated by the Democratic Party of the United States to so high a place of honor and service, and

Whereas, his return to Texas at this time affords loyal Texans an opportunity to do him honor and to warmly welcome him to his native State,

Now, therefore, be it Resolved that the Senate of Texas, the House of Representatives concurring, invite the Hon. John Nance Garner to address a joint session of the House and Senate at such time on Monday,

November 7th, as will be convenient to him.

NEAL,	PARRISH,
BERKELEY,	GREER,
POLLARD,	SMALL,
WOODUL,	GAINER,
THOMASON,	WOODRUFF,
HORNSBY,	POAGE,
COUSINS,	RUSSEK,
STEVENSON,	DeBERRY,
HARDIN,	RAWLINGS,
PATTON,	MARTIN,
CUNNINGHAM,	WILLIAMSON.
PURL,	

Read and adopted.

Recess.

On motion of Senator Pollard, the Senate, at 10:49 o'clock a. m., recessed until 11:30 o'clock a. m., today.

After Recess.

The Senate met at 11:30 o'clock a. m., pursuant to recess, and was called to order by Lieutenant Governor Edgar E. Witt.

Motion to Re-refer.

Senator Pollard moved to withdraw S. B. No. 1 from the Committee on State Affairs and re-refer it to the Senate sitting as a Committee of the Whole, beginning at 1:30 o'clock today.

The motion prevailed.

Notification Committees Report.

The committee appointed to notify the Governor appeared at the bar of the Senate and Senator Russek informed the Senate that the committee had performed its duty.

The committee appointed to notify the House appeared at the bar of the Senate and Senator Poage informed the Senate that the committee had performed its duty.

Senate Simple Resolution No. 1.

Senator Hardin sent up the following caucus report:

Austin, Texas, Nov. 3, 1932.

A caucus was held in the office of the Senate, attended by 24 Senators.

The purpose of the caucus was to determine the number, personnel and salary of the Senate officers and employees for the ensuing Fourth

Called Session of the Forty-second Legislature.

The following officers were elected:

Secretary: Bob Barker.

Journal Clerk: Wendell O'Neal.

Sergeant-at-Arms: Captain A. W. Holt.

Calendar Clerk: M. H. Dryer.

Engrossing and Enrolling Clerk: Miss Essie McGinnis.

Chaplain: Rev. W. H. Doss.

The Lieutenant Governor is requested to recommend that the Southwestern Bell Telephone Company employ Miss Mary Jacobs to attend to the duties of telephone operator of the Senate, and a night operator.

The Lieutenant Governor and Senators are hereby fully authorized and empowered to use all Assistant Sergeants-at-Arms and all other necessary employees for any and all purposes they desire.

The Lieutenant Governor is hereby authorized to appoint an elevator boy to serve at night and on Sunday, said elevator boy to receive \$3.00 per day; and to employ all necessary messengers, and pages, whose salaries shall be \$3.00 and whose parents shall not be officers or employees of any governmental agency in the State of Texas; and to employ such porters as he may deem necessary at a salary the same as at the Regular Session.

It is further recommended that each Senator and the Lieutenant Governor be permitted to name one employee of the Senate other than their private secretaries, and that their names be referred to a committee of five Senators appointed by the Chairman of the Caucus, and that said committee be authorized to select such employees in the Engrossing and Enrolling Room and other departments from the names submitted; and that all employees shall draw the salaries which were drawn during the Third Called Session of the Forty-second Legislature.

It is further recommended that no employee for the Senate shall, during the time he or she is employed, furnish to any person, firm, or corporation any information, or copies of bills or resolutions or other matters pertaining to the Senate, nor receive any compensation from any person, firm, or corporation during their employment by the Senate.

All employees except those responsible directly to some Senator or committee shall report for duty at eight (8) o'clock in the morning, and at one (1) o'clock in the afternoon to the Sergeant-at-Arms of the Senate, and none of said employees shall be paid for days they are absent from work.

The Chairman of the Caucus appointed Senators Russek, Poage, Rawlings, Patton, and Williamson to assign employees of the Senate selected by the various Senators to their respective positions.

It is further recommended that each Senator, the Lieutenant Governor and the Secretary of the Senate be permitted to name one stenographer and that such employees act as clerk of each committee of which said Senator shall be chairman, all of whom shall receive \$5.00 per day.

It is further recommended that the Lieutenant Governor be authorized to use any of the employees needed for any other work in the Senate wherever their services may be required in the judgment of the Lieutenant Governor.

It is further recommended that the Senators be given such time as they desire to name their personal appointments and that such appointments be made by handing the names of such appointees to the Secretary of the Senate.

It is further recommended that 2500 Journals be printed, and that same be prorated among the Senators and the Lieutenant Governor, except that 150 shall be furnished the members of the House.

It is further recommended that the Sergeant-at-Arms rent such typewriters as may be necessary for the use of employees of the Senate, such rental not to exceed \$4.00 per month per machine.

It is further recommended that each Senator, the Lieutenant Governor and the Secretary of the Senate be permitted to subscribe for three daily papers, to be paid for out of the contingent funds.

It is further recommended that the Lieutenant Governor, each Senator, and the Secretary of the Senate be allowed the stationery and postage needed by them respectively, and be allowed expenses incurred in transmitting and receiving of tele-

phone messages and telegrams that may be actually necessary in the discharge of their official duty, said expenses to be paid out of the contingent fund.

It is further recommended that the Secretary of the Senate, Sergeant-at-Arms and the porters who have been appointed to prepare the Senate Chamber in advance for the meeting of this session of the Legislature be paid for such days as are approved by the Contingent Expense Funds Committee at the salary herein provided said officers and employees, and that the names, residence and compensation of all employees be printed in the Journal.

POLLARD, Chairman.

HARDIN, Secretary.

Received and adopted.

Senator Woodruff sent up the following amendment:

Amend S. R. No. 1, by adding:

Mrs. Federer, former Secretary to Senator J. J. Loy, to attend his desk, mail, etc, and Lee McDougal as custodian of supplies in the Sergeant-at Arms room, are hereby appointed.

WOODRUFF.

Read and adopted.

The resolution as amended was adopted.

Adjournment.

Senator Woodul moved to recess until tomorrow morning at 10 o'clock.

Senator Purl moved as a substitute that the Senate adjourn until 10 o'clock tomorrow morning.

The motion prevailed, and, at 11:44 o'clock a. m., the Senate adjourned.

SECOND DAY.

Senate Chamber,

Austin, Texas,

November 5, 1932.

The Senate met at 10 o'clock a. m. pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Gainer.
Berkeley.	Greer.
Cousins.	Hardin.
Cunningham.	Holbrook.
DeBerry.	Hornsby.